

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION
2:09cr20**

UNITED STATES OF AMERICA,)	
)	
Vs.)	ORDER
)	
ANDREW TAB KILPATRICK.)	
_____)	

THIS MATTER is before the court upon defendant's Motion for Temporary Transfer of Custody. For cause, defendant shows that his counsel herein has scheduled a Motion for Appropriate Relief hearing in state district court for September 29, 2009, and that the state district court issued a *Writ of Habeas Corpus Ad Testificandum* requiring defendant's presence at such hearing.¹ In that motion, defendant seeks to vacate an earlier criminal judgment based on a claim of ineffective assistance of counsel.

Review of the pleadings in this matter reveals that defendant has entered a plea of guilty in this matter and that he remains in federal custody pending sentencing; thus, the federal prosecution of defendant is not complete. Counsel for defendant states in his motion that the United States does not object to the proposed transfer of custody to the State of North Carolina. Defendant cites no case law or other authority

¹ The court notes that counsel herein is appointed.

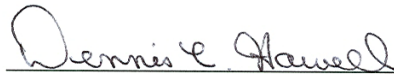
in moving for such relief. The court is most concerned with whether such transfer of custody will defeat this court's jurisdiction. See Robb v. Connolly, 111 U.S. 624 (1884).

The court is available for discussion of the matter through the close of business on this day.

ORDER

IT IS, THEREFORE, ORDERED that defendant's Motion for Temporary Transfer of Custody(#24) is **DENIED** without prejudice for lack of cited authority.

Signed: September 28, 2009



Dennis L. Howell
United States Magistrate Judge

